

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
South Slope Cooperative Telephone	)	WC Docket No. 04-347
Company, Inc.	)	(DA 04-2871)

**REPLY COMMENTS OF THE  
IOWA UTILITIES BOARD**

Comes now the Iowa Utilities Board (Iowa or Board) and, pursuant to the pleading cycle established by the Federal Communications Commission (FCC or Commission) offers the following reply comments in this matter.

In reviewing the Petition filed August 24, 2004, by South Slope Cooperative Telephone Company, Inc. (South Slope), and the comments filed October 4, 2004, by Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom), it appears there may be some disagreement between South Slope and Iowa Telecom regarding the meaning and effect of certain Iowa actions relating to South Slope. The Board files these reply comments to clarify this situation and reiterate its earlier request that whatever action the Commission takes in this proceeding it should be clear that its determination is limited to South Slope's status as an ILEC or CLEC for interstate purposes only, that is, that the Commission's decision should not affect South Slope's status for Iowa-jurisdictional purposes.

In its Petition, South Slope relies upon the Board's July 14, 1998, "Order Granting Application" in Docket No. TCU-98-15 as demonstrating that South Slope's proposed expansion of its service area was in the public interest.

(Petition at page 2.) Iowa Telecom asserts that South Slope's reliance on this Board action "may be somewhat misleading," at least to the extent that one might conclude from the Petition that the Board considers South Slope to be an ILEC in the Three Exchanges.<sup>1</sup> (Iowa Telecom comments at page 3.<sup>2</sup>)

Iowa Telecom is correct that the Board has not yet considered the merits of South Slope serving as an ILEC in the Three Exchanges. When South Slope filed its "Application For Modification Of Certificate Of Public Convenience And Necessity No. 0120" on June 4, 1998, South Slope did not ask for any ruling regarding its status as an ILEC or CLEC in the affected exchanges. (See Attachment A to South Slope's Petition.) Moreover, to the extent the Board's "Order Granting Application" can be said to have addressed the issue, the order supports the conclusion that the Board did not consider South Slope to be an incumbent provider in the Three Exchanges. At page 1 of the order, the Board addresses its decision to: "An applicant other than an IOWA CODE § 476.96(5) 'local exchange carrier' ...." Section 476.96(5) defines a "local exchange carrier" as follows:

5. "*Local exchange carrier*" means any person that was the incumbent and historical rate-regulated wireline provider of local exchange services or any success to such person that provides local exchange services under an authorized certificate of public convenience and necessity within a specific geographic area described in maps filed with and approved by the board as of September 30, 1992.

---

<sup>1</sup> The Oxford, Tiffin, and Solon, Iowa, exchanges.

<sup>2</sup> Iowa Telecom goes on to acknowledge that South Slope does not "argue that the Iowa Board considers South Slope to be an ILEC in the Three Exchanges or has ever considered the merits of South Slope serving as such an ILEC." (Id. at page 4.)

This definition of the incumbent "local exchange carrier" is limited, both in time and geography, to the providers of local exchange services and the areas they served as of a date certain, that is, September 30, 1992. With respect to its service area on that date in 1992, South Slope is clearly the incumbent "local exchange carrier" under Iowa law. However, with respect to the Three Exchanges and its 1998 application to amend its Iowa certificate, South Slope was addressed by the Board as "an applicant ***other than*** [a] ... local exchange carrier," that is, a non-incumbent. (Board "Order Granting Application," page 1, emphasis added.)

Clearly, the Board's 1998 order makes no explicit finding regarding South Slope's state law status as an ILEC or CLEC in the Three Exchanges. This is not particularly surprising, since neither term is defined in Iowa's statutes and at the time there was no practical difference in the extent of regulation applied. As an incumbent, South Slope was (and is) not subject to rate regulation by the Board because it is a cooperative telephone company. (See Iowa Code § 476.1.) As a "competitive local exchange service provider"<sup>3</sup> in the Three Exchanges, South Slope was (and is) subject to similarly limited regulation, pursuant to Iowa Code § 476.101(1).

However, since 1998 there has been at least one significant change in the regulations applied to incumbents and competitors. In 2004, the Board amended its rules regarding intrastate access rates to distinguish between these two types

---

<sup>3</sup> "Competitive Local Exchange Service Provider" is a statutory term defined at § 476.96(3).

of service providers. Like the FCC's rules, the Board's rules allow a telephone association to file a model access tariff in which the independent telephone companies can then concur. See 199 IAC 22.14(2). Prior to the recent amendments, the rule required that the association access tariff include a common carrier line charge (CCLC) element of three cents per minute. Thus, the intrastate access rates for all carriers that concurred in the association tariff also included the CCLC. This included competitive local exchange service providers. The Board found that this situation gave a competitive advantage to CLECs when competing with larger, rate-regulated ILECs that are required to charge much lower intrastate access rates. Therefore, the Board amended the rule to provide that when a CLEC concurs in the association access tariff and then offers service in competition with an ILEC with lower access rates, the CLEC must deduct the CCLC from its intrastate access rates. 199 IAC 22.14(2)"d"(1)"2." This reduces the artificial competitive advantage associated with higher access rates and shifts the competitive focus to the merits of the services offered.

This distinction requires that carriers be correctly identified as ILECs or CLECs for intrastate purposes. For this reason, it is important that any action taken by the Commission with respect to South Slope's petition should be

explicitly and clearly limited to South Slope's status for interstate purposes and should not affect South Slope's intrastate categorization.

Respectfully submitted,

David Lynch  
General Counsel

John Ridgway  
Manager  
Telecommunications Section

Iowa Utilities Board  
350 Maple Street  
Des Moines, Iowa 50319-0069

October 19, 2004